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FISCAL IMPACT STATEMENT

LS 7770

BILL NUMBER: HB 1717

NOTE PREPARED: May 15, 2007

BILL AMENDED: Apr 29, 2007

SUBJECT: Regulation of Loan Brokers.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: The bill has the following provisions:

Homeowner Protection Unit: It specifies that, to the extent authorized by federal law, the Homeowner Protection Unit in the Attorney General's Office shall cooperate with federal, state, and local law enforcement agencies in the investigation of violations of certain federal laws and regulations. It also requires the Unit to report annually to the Legislative Council.

Securities Division Enforcement Officers: It exempts an enforcement officer of the Securities Division of the Office of the Secretary of State from basic training requirements for law enforcement officers. It specifies that a securities enforcement officer is a law enforcement officer for the purpose of certain statutes.

Franchises and Collection Agencies: It gives the Securities Commissioner the same administrative powers and remedies to regulate: (1) franchises; and (2) collection agencies; as the Commissioner has to regulate securities. It also provides the same appeals procedures in the laws governing: (1) franchises; and (2) collection agencies; as are available under the laws governing securities.

Registration of Loan Brokers: It specifies that a person that seeks to be registered as a loan originator must: (1) apply to the Commissioner for a certificate of registration; and (2) pay a \$100 registration fee. It also specifies that a person that seeks to be registered as a principal manager for a loan brokerage business must: (1) apply to the Commissioner for a certificate of registration; and (2) pay a \$200 registration fee. It requires a person applying for registration as an originator or a principal manager to pass an examination.

Loan Broker Contracts: It requires a contract for services of a loan broker to contain a specific statement.

Disciplinary Actions: It expands the reasons for disciplinary action against a loan broker or a registrant to include: (1) regulatory actions against the licensee or registrant in Indiana or other jurisdictions; and (2) certain violations, crimes, or practices committed by the licensee or registrant. It specifies that the Commissioner may by summary order deny, suspend, or revoke a license or certificate of registration before any proceeding is initiated against the licensee or registrant.

Exemptions: It provides that the exemption from the loan broker law that applies to a correspondent of loans insured by the United States Department of Housing and Urban Development applies only if the person closes at least 25 insured loans in Indiana during each calendar year. It also provides that a person claiming certain exemptions from the loan broker law must file a notice every 24 months to receive or maintain the exemption.

Reports: It requires the Commissioner to report to the Legislative Council not later than November 1, 2007, concerning the implementation of the amendments to the loan broker statute. It also requires the Department of Financial Institutions to study the feasibility of regulating loan brokers, originators, and principal managers.

Interim Study Committee: It establishes the Interim Study Committee on Mortgage Lending Practices and Home Loan Foreclosures. It also requires the Committee to study various issues concerning mortgage lending practices and home loan foreclosures.

Uniform Securities Act: The bill also makes certain changes to the Uniform Securities Act.

Effective Date: Upon passage; July 1, 2007; July 1, 2008.

Explanation of State Expenditures: *Summary:* The bill will increase costs for the Securities Division of the Office of the Secretary of State and the Secretary of State to regulate franchises and collection agents and by adding to the registrations required for loan brokers. However, the bill provides new fees, civil penalties, and cost reimbursement that may offset the additional expenditures. Certain expenses for training and incarceration would not be offset. The bill could also increase costs for the Attorney General's Homeowner Protection Unit by adding to the Unit's investigatory responsibilities. Additionally, minimal administrative costs will be incurred by the Homeowner Protection Unit to provide annual progress reports, and by the Securities Division Commissioner and the Department of Financial Institutions to provide one-time reports to the Legislative Council. The bill also establishes a summer study committee.

Homeowner Protection Unit: In addition to its current responsibilities, under the bill, the Attorney General's Homeowner Protection Unit will cooperate with federal, state, and local law enforcement agencies to investigate violations of the federal Truth in Lending Act and the Real Estate Settlement Procedures Act, and any other federal laws or regulations. The Homeowner Protection Unit is funded through the Homeowner Protection Unit Account of the state General Fund which receives \$1.25 of a \$3.00 fee on mortgage recordings. The Account had a free balance of about \$423,275 as of June 30, 2006.

The bill also requires the Homeowner Protection Unit to report to the Legislative Council between June 30 and November 1 of each year concerning the Unit's finances; staffing; complaints received; and recommendations for legislation. The costs of preparing the report could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff

positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Securities Division Enforcement Officers: In order to exercise law enforcement powers, the bill requires securities enforcement officers of the Securities Division of the Secretary of State's Office to complete a pre-basic course for training law enforcement officers and any other training courses established by the Securities Commissioner and Law Enforcement Training Board. The Securities Division will incur salary expenses while enforcement officers are trained, but will not incur expenses for the pre-basic course. The Law Enforcement Academy provides the pre-basic course free of charge to individuals employed by law enforcement agencies. Cost for other training will depend on the requirements established by the Commissioner and Board.

Background on Pre-Basic Training: The pre-basic course is 40 hours, mostly completed online but containing interactive components for fire arms use and physical tactics. The Law Enforcement Academy is funded by the dedicated Law Enforcement Training Fund, which is funded by court fee revenue (under IC 33-19-7-5) as well as by General Fund appropriations. The FY 2006 Academy expenditures were \$4.2 M (\$1.5 M from General Fund dollars and \$2.7 M of dedicated fund revenue). The Academy reverted \$36,347 on June 30, 2006, to the state General Fund, and had on December 18, 2006, four vacant positions valued at \$80,912. Two of the vacant positions had been vacant for more than two years.

Franchises and Collection Agencies: The Commissioner (for franchises) and the Secretary of State (for collection agencies) are given the authority to investigate and may issue orders or notices if it appears that a person has or is about to violate the provisions of the act. It allows the Commissioner or the Secretary of State to impose a civil penalty of up to \$10,000 per violation and to bring action in court to enforce payment. The provisions of the bill are expected to require the Securities Division to hire at least two more enforcement officers. The Commissioner and the Secretary of State may direct the costs of an investigation or proceeding to be paid.

Background on the Securities Division: The Securities Division currently employs six enforcement officers. The base pay for the enforcement officers is about \$35,000 annually. Money from reimbursement of investigation costs are placed in the Securities Division Enforcement Account of the state General Fund. In FY 2006, expenses paid from this account were \$1.4 M.

Felony Offense: The bill adds a Class C felony for a person knowingly or intentionally making or causing to be made in documents, investigations or proceedings a false or misleading statement. A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction facilities for all Class C felony offenders is approximately two years.

Registration of Loan Brokers: The Commissioner will be responsible for registering loan brokers and new categories of managers and originators. The Securities Commission could incur increased costs including prescribing registration forms, maintaining license and registration numbers, preparing and administering tests, checking criminal background, and qualifications and background, and making investigations of registering individuals. Also, the Commissioner will report to the Legislative Council not later than November 1, 2007, concerning the regulation and licensing of loan brokers and the regulation and

registration of originators and principal managers. The costs to provide these services is indeterminable, but these costs may be offset with registration fees and cost reimbursements allowed in the bill.

Reports: The Department of Financial Institutions will incur additional expenditures to study the feasibility of assuming the responsibility for regulating loan brokers, originators, and principal managers and preparing a report for Legislative Council by November 1, 2007. The costs of preparing the study and report could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Interim Study Committee: This bill establishes the Interim Study Committee on Mortgage Lending Practices and Home Loan Foreclosures with an unspecified number of legislators serving on the committee. The committee operates under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members or \$16,500 for committees with 16 or more members. The Committee will report to the General Assembly by November 1, 2007.

Explanation of State Revenues: *Registration Loan Brokers:* Registration and license fees collected are placed in the Loan Broker Regulation Account of the state General Fund for use of the Securities Division in administering loan brokers. New registrations required by the bill could increase revenues to this account. The bill has the following fees and potential revenues.

Registration	Registration Fee in HB 1717	Estimated Number (unless noted)	Estimated Biennial Revenue
Loan Broker	\$400 (increased from \$200 under current law)	1,265 (Actual as of 2/2007)	\$506,000
Ultimate Equitable Owner (10% or more of the equity interest)	\$200	1,265*	\$253,000
Loan Originator	\$100	8,000**	\$800,000
Principal Manager	\$200	1,265*	\$253,000
Exempt Correspondents of Loans Insured by the U.S. Department of Housing and Urban Development	\$400	996**	\$398,400
* Estimated at one per loan broker (actual results may be higher).			
** Securities Division estimates discussed at 2/20/2007 subcommittee meeting of the House Financial Institutions Committee.			

Background on the Loan Broker Regulation Account: Revenue from business license fees in FY 2005 were \$210,600 and in FY 2006 were \$114,240. The expenditures from the Loan Broker Regulation Account were \$48,196 in FY 2005 and \$37,415 in FY 2006. Costs of investigations recovered are deposited in the Securities Division Enforcement Account of the state General Fund. Revenues for this account in FY 2006

were \$837,374.

Felony Offense: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class C felony is \$10,000. However, any additional revenues would likely be small.

Civil Penalties: The bill allows the Commissioner or the Secretary of State to impose a civil penalty on a person who violates the chapters or any rule or regulation adopted under the chapter concerning franchises and collection agencies. Penalties are deposited in the Securities Division Enforcement Account of the state General Fund.

The bill allows the Commissioner or the Secretary of State to go to court to enforce payment, and it allows appeal of final orders and civil penalties imposed by the Commissioner or the Secretary of State. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Felony Offenses:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Felony Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

Civil Penalties: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Attorney General's Office - Homeowner Protection Unit; Securities Commission; Department of Financial Institutions; Indiana Law Enforcement Academy; Department of Correction; State Treasurer.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: www.inamb.com, Jeff Bush, 317-234-2741; Captain Bridge, 317-837-3228; Wayne Davis, 317-232-6681; Auditor's Appropriation and Allotment Trial Balance 6/30/2006.

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